

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

Michael T. Gershberg
202.429.6208
mgershberg@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

September 15, 2009

Via Facsimile and Federal Express

Mr. William E. Bordley
Associate General Counsel/FOIPA Officer
Office of General Counsel
United States Marshals Service
600 Army Navy Drive
Arlington, VA 22202-4210

Dear Mr. Bordley:

Re: Freedom of Information Act Request No. 2009USMS13662

This letter is submitted on behalf of our client, Yahoo! Inc. ("Yahoo!"), and in response to your letter to Yahoo! dated August 25, 2009, regarding a request for release of information under the Freedom of Information Act ("FOIA"). Pursuant to 28 C.F.R. § 16.8(f), Yahoo! submits this objection to the disclosure of its business information. The information described below is confidential commercial information and therefore covered by Exemption 4 to the FOIA and the Trade Secrets Act, 18 U.S.C. § 1905.

The FOIA request at issue seeks release of information detailing the amount of money paid by the U.S. Marshals Service ("USMS") to Internet-based service providers to compensate for the cost of responding to law enforcement requests for records. USMS has determined that Yahoo!'s cost reimbursement policy, which is part of the Yahoo! Compliance Guide for Law Enforcement, may be responsive to this request. Yahoo! assumes that the single page included in the Notice to Submitter of Business Information is the only information submitted by Yahoo! to USMS that the agency is contemplating releasing pursuant to this FOIA request. If this is not the case, please let us know immediately so that we may formally object to any additional disclosure. Any other Yahoo! submissions that USMS may consider responsive to this FOIA request are also confidential or law enforcement-sensitive and therefore exempt from disclosure.

Information contained in this letter is customarily kept confidential by Yahoo!. Moreover, release of this letter would likely cause substantial competitive harm to Yahoo! as well as impair the government's ability to obtain information necessary for making appropriate decisions with regard to future FOIA requests. Accordingly, this letter is protected from public

release by FOIA Exemption 4 and the Trade Secrets Act. In the event the USMS either receives a request for disclosure of this letter, or otherwise considers making a decision to release it, we request immediate notice of such request or decision, at least ten working days prior to any release.

ANALYSIS

I. Exemption 4 Applies to Yahoo!'s Cost Reimbursement Policy

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person {that is} privileged or confidential" from disclosure under the FOIA.¹ Thus, in order for information in federal agency records to fall within the second broad category of Exemption 4, it must be: (1) commercial or financial; (2) obtained from a person; and (3) privileged or confidential. Yahoo!'s cost reimbursement policy meets all three criteria.

A. "Commercial or Financial"

If information relates to business or trade, it is "commercial or financial." These terms are to be given their "ordinary meanings."² Therefore, records are commercial as long as the submitter has a "commercial interest" in them.³

Under this standard, Yahoo!'s cost information and is clearly "commercial" information. Yahoo! certainly has a commercial interest in its cost and pricing data, which courts have repeatedly found to constitute commercial information. "Unquestionably, information relating to pricing and technical designs constitutes commercial or financial information within the meaning of the exemption."⁴ Yahoo!'s cost reimbursement rates are also derived from its labor rates for the relevant employees, plus overhead. This information is within the scope of Exemption 4.⁵

¹ 5 U.S.C. § 552(b)(4).

² Pub. Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (citing Wash. Post Co. v. HHS, 690 F.2d 252, 266 (D.C. Cir. 1982), and Bd. of Trade v. Commodity Futures Trading Comm'n, 627 F.2d 392, 403 (D.C. Cir. 1980)) (preventing disclosure of confidential data from clinical tests).

³ Id.

⁴ Landfair v. U.S. Dep't of Army, 645 F. Supp. 325, 328 (D.D.C. 1986); see also, e.g., Cortez III Scriv. Corp. v. NASA, 921 F. Supp. 8 (D.D.C. 1996) (finding cost data to be confidential commercial information).

⁵ See McDonnell Douglas Corp. v. NASA, 180 F.3d 303 (D.C. Cir. 1999) (preventing release of labor rates and overhead figures under Exemption 4).

B. "Obtained From a Person"

The requirement that the information be "obtained from a person" is also met here. The term "person" refers to a wide range of entities, including corporations and other business organizations.⁶ As a corporation, Yahoo! is considered a "person."

C. "Privileged or Confidential"

As noted in USMS' August 25 letter, the "confidential" prong of the third requirement is analyzed under two separate standards, either of which is sufficient to satisfy the requirements of Exemption 4. First, under the long-standing test set forth in National Parks & Conservation Ass'n v. Morton:

Commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.⁷

Second, in Critical Mass Energy Project v. NRC, the D.C. Circuit amended the National Parks test for cases in which the submission to a federal agency is voluntary. Under this test, information is protected by Exemption 4 if it is voluntarily submitted to an agency and it is of a kind that the submitter "customarily" would not disclose to the public.⁸ The test was left unchanged in cases of compelled submissions. Specifically, Critical Mass affirmed the National Parks test for "determining the confidentiality of information submitted under compulsion," but was announcing a categorical rule for the protection of information provided on a voluntary basis.⁹

Yahoo! submitted its cost reimbursement policy to USMS voluntarily and satisfies the Critical Mass standard for determining confidentiality. Moreover, even if USMS were to conclude that this information were not submitted voluntarily for purposes of the Critical Mass test, the information would still satisfy the National Parks standard. Therefore, Yahoo!'s information is covered by Exemption 4.

⁶ See, e.g., Nadler v. FDIC, 92 F.3d 93, 95 (2nd Cir. 1996) (term "person" includes "an individual, partnership, corporation, association, or public or private organization other than an agency" (quoting definition in Administrative Procedure Act, 5 U.S.C. § 551(2))).

⁷ National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

⁸ Critical Mass Energy Project v. NRC, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc), cert. denied, 507 U.S. 984 (1993).

⁹ Id.

1. Critical Mass Standard

As stated above, in Critical Mass, the D.C. Circuit held that information is “‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.”¹⁰ The threshold inquiry under this analysis is whether information was submitted to a government agency voluntarily or whether it was compelled.

Although the D.C. Circuit did not define a “voluntary” submission of information, the U.S. Department of Justice has issued policy guidance on this issue. Specifically, the relevant inquiries are the following questions: “Did the agency hold the legal authority to require that information submission and, if so, did it in fact exercise that authority in obtaining that information?”¹¹ While government agencies exercise legal authority to collect information in various ways, the “key question under *Critical Mass* is whether those who choose to participate in the activity have information-submission requirements placed upon them as a lawful condition of their participation in that activity or an agency’s related administrative process.”¹² If a submitter is under no obligation to provide the information, then it is considered to be submitted voluntarily.

The second question in DOJ’s policy guidance is equally important, however. “Under *Critical Mass*, it is possible that an agency might hold the authority to require submission of certain information, but not have exercised that authority. . . . Such unexercised authority, or the mere ‘power to compel’ certain submissions, does not constitute an enforced ‘requirement’—which leaves any submission that is made under those circumstances an entirely “voluntary” one”¹³

Under this standard, Yahoo! submitted its cost reimbursement policy voluntarily. Yahoo! distributes this information to law enforcement agencies in various ways. It periodically distributes this information as part of its “Compliance Guide for Law Enforcement” (and updates thereto) exclusively to law entities, including various law enforcement agencies on its mailing list. It also sends the Compliance Guide to law enforcement agencies that are not on its mailing list but have requested a copy. Yahoo! also voluntarily distributes the Compliance Guide to law enforcement agencies through the National Center for Missing and Exploited Children (“NCMEC”) and through law enforcement training sessions and conferences. See enclosed

¹⁰ Id.

¹¹ FOIA Update, Vol. XIV, No. 2, at 6-7 (“Exemption 4 Under Critical Mass: Step-By-Step Decisionmaking”).

¹² Id.

¹³ Id.

b6 Affidavit of [REDACTED] at ¶ 5. Yahoo!'s Compliance Guide for Law Enforcement, which includes the cost reimbursement policy, is sent to law enforcement agencies that may deal with Yahoo! to provide advance information about Yahoo!'s policies and a rough guide to costs that may be billed to these agencies for Yahoo!'s costs incurred responding to legal process.

This cost reimbursement policy is not provided to agencies along with Yahoo!'s bills or invoices for responding to legal process. It is not sent as part of, or in relation to, any transaction with a government agency. Rather, Yahoo! distributes the information on a purely voluntary basis as advance notice and guidance to law enforcement agencies. It is not sent in response to a government mandate or as a condition to participating in any activity. USMS does not require Yahoo! to submit such data in order to seek reimbursement for compliance costs, and has not requested the information in this context. USMS simply has not placed any information-submission requirement on Yahoo! in any way, and provision of the cost reimbursement policy to the USMS was not a condition to participating in any transaction or activity. See Affidavit of [REDACTED] at ¶ 6.

b6 Moreover, even if USMS possessed the legal authority to compel submission of Yahoo!'s cost reimbursement policy, it did not exercise such authority in this case. USMS did not seek the information by regulation, subpoena, or any informal mandate. See Affidavit of [REDACTED] at ¶ 7. Therefore, this case is similar to Critical Mass itself, in which the D.C. Circuit held that the unexercised "power to compel" rendered a submission voluntary.¹⁴ b6

Since Yahoo!'s cost reimbursement policy was voluntarily submitted, it is protected under Exemption 4 as "confidential" information as long as "it is of a kind that would customarily not be released to the public by the person from whom it was obtained."¹⁵ This standard has uniformly been interpreted to refer to the treatment that the specific submitter affords the information, not the treatment afforded similar information by the industry as a whole.¹⁶

Applying this standard, the cost reimbursement policy must be treated as confidential because Yahoo! does not customarily release this information to the public. Yahoo! does not disclose compliance or cost reimbursement data to the public and has a policy against doing so. This information is provided outside of the company only to law enforcement agencies with

¹⁴ See Critical Mass, 975 F.2d at 880 ("Nor do we see any reason to interfere with the NRC's exercise of its own discretion in determining how it can best secure the information it needs.").

¹⁵ Id. at 879.

¹⁶ See id. at 872, 878-90; see also, e.g., Ctr. for Auto Safety v. NHTSA, 244 F.3d 144, 148 (D.C. Cir. 2001) (emphasizing that "in assessing customary disclosure, the court will consider how the particular party customarily treats the information, not how the industry as a whole treats the information").

which Yahoo! deals. Yahoo!'s Compliance Guide for Law Enforcement, inclusive of the cost reimbursement policy, is explicitly marked with a warning that the information is not to be distributed outside law enforcement agencies. See Affidavit of [REDACTED] at ¶ 4. b6

Yahoo! receives requests for assistance from many different law enforcement agencies, all of whom rely on Yahoo!'s strict policy of maintaining confidentiality about how it works with law enforcement. We believe that this policy serves the public interest, and we will continue to abide by it.

For these reasons, the information at issue here satisfies the Critical Mass test for confidential information, and is therefore protected from disclosure under Exemption 4 of the FOIA.

2. National Parks Standard

The analysis above establishes that Yahoo!'s cost reimbursement policy is "confidential" within the meaning of Exemption 4 under the Critical Mass test. However, if USMS were to determine that the Critical Mass test is inapplicable because the information was not voluntarily submitted (and there is no basis for such a conclusion), it should still be considered confidential information covered by Exemption 4 under the National Parks tests.

As noted above, the National Parks test is explicitly disjunctive; information will be considered confidential, and therefore within the scope of Exemption 4, if it satisfies either one of test's two parts. The first part is known as the "impairment prong," while the second part is known as the "competitive harm prong." Yahoo!'s cost reimbursement policy satisfies both prongs of the test.

a. Impairment Prong

The impairment prong applies in situations, such as here, in which disclosure under the FOIA would lead to the submission of less complete information. Yahoo! provides its cost reimbursement policy, and its entire Compliance Guide for Law Enforcement, voluntarily to law enforcement agencies, such as USMS, to assist the agencies in their planning and to provide them with a guide as to potential compliance costs associated with investigation. However, Yahoo! is not required to submit this information in order to seek reimbursement for compliance costs. Nor is Yahoo! required to provide detailed information regarding its services and data retention policies to assist law enforcement with Internet-based investigations. If Yahoo! knew that this type of voluntarily submitted cost and compliance data would be publicly disclosed, its incentives would change. Yahoo! may conclude that the benefits that come from providing educational and training material to law enforcement entities, namely that they can better plan how and when to use legal process in Internet investigations appropriately, are outweighed by the potential for criticism and competitive harm.

b6 [REDACTED] Federal courts have recognized that Exemption 4 applies in instances where disclosure of information might encourage parties to be less forthcoming in their submissions¹⁷ or in order to "foster[] the provision of full and accurate information."¹⁸ These court decisions demonstrate that release of information such as the cost information would place on Yahoo! a disincentive to providing the fullest, most detailed compliance-related data. See Affidavit of [REDACTED] at ¶ 8. b6

Therefore, the government's interest in collecting compliance-related information is best served by protecting Yahoo!'s cost reimbursement data from disclosure.¹⁹ To release this information would impair USMS' ability to gather the most complete data possible.

In addition, if the USMS were to disclose this cost data, then Internet-based service providers would doubt the confidentiality of similar data submitted to other federal law enforcement agencies. That would negatively affect the government's ability to collect complete information from a wide range of companies and submissions.

b. Competitive Harm Prong

Under the "competitive harm prong," it is not necessary to show actual competitive harm. This prong requires only "actual competition and a likelihood of substantial competitive injury."²⁰ To show competitive harm, the FOIA requires only a reasonable discussion of the

¹⁷ See, e.g., FlightSafety Servs. v. Dep't of Labor, 326 F.3d 607, 612 (5th Cir. 2003) (per curiam) (protecting data because disclosure "presents a serious risk that sensitive business information could be attributed to a particular submitting business [and such] attribution would indisputably impair [the agency's] future ability to obtain similar information from businesses [that] provide it under an explicit understanding that such information will be treated confidentially"); Bowen v. FDA, 925 F.2d 1225, 1228 (9th Cir. 1991) (protecting information upon which agencies relied heavily and would be less likely to obtain if businesses feared that it would be made public).

¹⁸ Afr. Fund v. Mosbacher, No. 92-289, 1993 WL 183736, at *7 (S.D.N.Y. May 26, 1993) (protecting information submitted with export license applications).

¹⁹ See Judicial Watch, Inc. v. Exp.-Imp. Bank, 108 F. Supp. 2d 19, 30 (D.D.C. 2000) ("The government has a compelling interest in ensuring that the information it receives is of the highest quality and reliability, and disclosure of potentially sensitive commercial and financial information, even where submissions of information are mandatory, would jeopardize the Bank's ability to rely on such information that is submitted.").

²⁰ CNA Financial Corp. v. Donovan, 830 F.2d 1132, 1152 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988).

likelihood and nature of harm that could result from disclosure.²¹ Competitive harm has even been found in cases where some of the information at issue is already publicly available. In one case, the federal district court for the District of Columbia stated that information made available in a different context because of overseas marketing is "different," and that fact "does not diminish {the submitter's} claim of competitive commercial harm from disclosure."²²

First, Yahoo! is in direct, actual competition with other providers of Internet-based services such as email and search engines. Yahoo! competes with other providers for users and advertisers. Second, Yahoo! will suffer substantial competitive injury if its cost data and compliance policy information is released. As courts have often held, the release of cost, overhead, and labor rate information (or data from which such information may be derived) is likely to cause competitive harm.²³

Moreover, the FOIA request itself demonstrates the requester's own expectation that disclosure of this data will cause injury to Yahoo! and its reputation. In the FOIA request, Mr. Soghoian refers to his blog, <http://paranoia.dubfire.net>. A quick review of this blog indicates that Mr. Soghoian "use[s] this blog to shame the corporations that continue to do harm to user online privacy."²⁴ He goes on to describe the intent of FOIA requests like the one at issue here:

"We need transparency, sunshine, and some accountability. If users realized how often their data is disclosed to police, and how often it occurs without a warrant or

²¹ See GC Micro Corp. v. Defense Logistics Agency, 33 F.3d 1109, 1115 (9th Cir. 1994) ("{T}he law does not require {agency} to engage in a sophisticated economic analysis of the substantial competitive harm . . . that might result from disclosure"); Pub. Citizen Health Research Group, 704 F.2d at 1291 ("Under the second prong of this test . . . the court need not conduct a sophisticated economic analysis of the likely effects of disclosure.").

²² Pub. Citizen Health Research Group v. FDA, 997 F. Supp. 56, 66 (D.D.C. 1998), affirmed in part and reversed in part on other grounds, 185 F.3d 898 (D.C. Cir. 1999); see also Martin Marietta Corp. v. Dalton, 974 F. Supp. 37, 40 (D.D.C. 1997) (holding that a prior limited release of information does not "lessen the likelihood that {the submitter} might suffer competitive harm if it is disclosed again, this time at the behest of acknowledged commercial adversaries").

²³ See McDonnell Douglas Corp. v. NASA, 180 F.3d 303 (D.C. Cir. 1999) (holding that release of labor rates and overhead figures could cause competitive harm); Westinghouse Electric Corp. v. Schlesinger, 542 F.2d 1190, 1198 (4th Cir. 1976) (affirming decision not to disclose information that would allow competitors to perform cost-price analysis); Canadian Commercial Corp. v. U.S. Dep't of the Air Force, 514 F.3d 37 (D.C. Cir. 2008) (ordering agency not to disclose cost and price data submitted in a contract bid because of likelihood of competitive harm).

²⁴ <http://paranoia.dubfire.net/> (Aug. 17, 2009).

any judicial oversight, many would be shocked. So -- if you work in the privacy, legal or policy department of a major Internet provider (as I know a few of my readers do), consider this your warning. You either need to come clean voluntarily, or the information will be forced out. . . . My first avenue of attack will be via a number of FOIA requests [] -- if that fails, I'll have to ramp things up a bit. The current level of secrecy is simply not acceptable."²⁵

It is reasonable to assume from these comments that the information, if disclosed, would be used to "shame" Yahoo! and other companies -- and to "shock" their customers. Therefore, release of Yahoo!'s information is reasonably likely to lead to impairment of its reputation for protection of user privacy and security, which is a competitive disadvantage for technology companies.

II. The Trade Secrets Act Prohibits Disclosure of Yahoo!'s Cost Data

It is well settled that under the Trade Secrets Act, 18 U.S.C. § 1905, the government may not disclose information that falls within FOIA Exemption 4.²⁶ Thus, "whenever a party succeeds in demonstrating that materials fall within Exemption 4, the government is precluded from releasing information by virtue of the Trade Secrets Act."²⁷ As explained above, the confidential commercial information Yahoo! seeks to protect from disclosure comes within FOIA Exemption 4. Consequently, disclosure of that information by USMS would violate the Trade Secrets Act.

III. Yahoo!'s Cost Reimbursement Policy Is Not Responsive to the FOIA Request

Finally, while USMS need not reach this issue based on the foregoing analysis, Yahoo! believes that its cost reimbursement policy is not responsive to the FOIA request. The request solicited "information detailing the amount of money paid by the U.S. Marshals Service to major providers of Internet based services" and "'price lists' detailing the standard prices for various forms of surveillance."²⁸ The information at issue, however, expressly states that the data are

b4
The actual amounts invoiced by

²⁵ <http://paranoia.dubfire.net/search?updated-max=2009-06-24T15%3A57%3A00-04%3A00&max-results=5> (June 10, 2009).

²⁶ See, e.g., McDonnell Douglas Corp. v. U.S. Dep't of the Air Force, 375 F.3d 1182, 1185-86 (D.C. Cir. 2004) ("The Trade Secrets Act . . . the scope of which is at least coextensive with Exemption 4, effectively prohibits an agency from releasing information subject to the exemption." (internal citations omitted)); see also McDonnell Douglas Corp. v. Widnall, 57 F.3d 1162, 1164 (D.C. Cir. 1995).

²⁷ Widnall, 57 F.3d at 1164; accord Canadian Commercial Corp., 514 F.3d at 39.

²⁸ Letter from Christopher Soghoian to U.S. Marshals Service regarding FOIA Request (June 25, 2009).

Mr. William E. Bordley
September 15, 2009
page 10

STEPTOE & JOHNSON LLP

Yahoo! do not appear in this document. Therefore, these data do not detail the actual amounts USMS paid to Yahoo! for responding to law enforcement requests. Nor does this information constitute a price list or other detailing of standard prices invoiced to USMS. As Yahoo!'s information makes clear, there are no standard prices for these transactions.

Moreover, the page number on the bottom of the cost reimbursement policy, the Roman numbering of the chapter, and the positioning of the policy on the page, indicate that it is part of a larger document. Were Yahoo!'s data to be disclosed, this implicit information would necessarily be disclosed as well. This additional information is not responsive to the FOIA request, however, and its release would be prejudicial to Yahoo!. It would forceably lead to an effort to obtain the larger document (that is, Yahoo!'s Compliance Guide for Law Enforcement) either through additional FOIA requests or through other means, something that is inappropriate and beyond the scope of the original narrow request.

Accordingly, Yahoo!'s cost reimbursement policy is not directly responsive to the FOIA request, and should not be disclosed independently of Exemption 4.

CONCLUSION

For all the above reasons, release of Yahoo!'s cost reimbursement policy is not permitted under the FOIA. We appreciate your detailed consideration of the preceding legal analysis. If you have any questions, please do not hesitate to contact me at (202) 429-6208.


Respectfully submitted,



Michael T. Gershberg

Counsel to Yahoo! Inc.

Enclosure:

Affidavit of 

66

b6 1. [REDACTED] do hereby declare as follows:

b6 1. I am the [REDACTED] at Yahoo! Inc. ("Yahoo!"), which is a publicly listed U.S. company headquartered at 701 First Avenue, Sunnyvale, California 94089. Yahoo! is a global Internet business and consumer services company offering a comprehensive branded network of properties and services such as email, a search engine, and social media sites.

b6 2. I have been employed at Yahoo! for eleven years. One of my current responsibilities as [REDACTED] is managing a team of paralegals and legal assistants who respond to third party requests for subscriber information. During this time I have become familiar with the policies and procedures for the handling of confidential commercial information.

3. I am providing this affidavit in connection with the U.S. Marshals Service's ("USMS") Notice to Submitter of Business Information, sent to Yahoo! on August 25, 2009. The information at issue is Yahoo!'s cost reimbursement policy for responding to law enforcement requests, which is part of the Yahoo! Compliance Guide for Law Enforcement.

4. Because of the potential for competitive harm, Yahoo! has an established business practice of keeping confidential all commercial or financial information of the type contained in its cost reimbursement policy. This information is not customarily released to the public. In fact, it is only distributed to law enforcement agencies, and Yahoo! has a policy against distributing such information to any party outside of law enforcement. The document containing Yahoo!'s cost reimbursement policy is clearly marked as follows:

This compliance guide is designed to assist law enforcement in understanding Yahoo!'s policies and practices with regard to retention and disclosure of electronic information and to provide answers to frequently asked questions related to subpoenas and other legal process. The policies and procedures in this guide are subject to change without notice, and **this document is not meant to be distributed to individuals or organizations that are not law enforcement entities**, including Yahoo! customers, consumers, or civil litigants. (emphasis in original)

5. Yahoo! voluntarily provided its cost reimbursement policy, as part of its Compliance Guide, to USMS. Yahoo! periodically distributes its Compliance Guide to various law enforcement agencies on its mailing list. Yahoo! also voluntarily distributes the guide to law enforcement agencies through the National Center for Missing and Exploited Children ("NCMEC") and through law enforcement training sessions and conferences. In each instance, this information is provided voluntarily and restricted to law enforcement personnel.

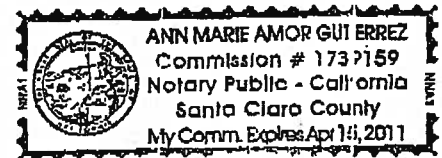
6. Yahoo! does not submit its cost reimbursement policy to law enforcement agencies along with its invoices for responding to legal process. The transmission of this information does not occur in connection with any transaction with a government agency. Law enforcement agencies do not require Yahoo! to submit such data in order to seek reimbursement for reporting costs, and to the best of my knowledge, USMS has not requested the information in that context.

7. Yahoo! does not provide its cost reimbursement policy to any government agency in response to a request pursuant to any legal authority. In particular, this information has not been submitted to USMS pursuant to a statute, regulation, subpoena, or other legal requirement. Nor has the information been submitted pursuant to an informal mandate, or as a requirement of, or condition to, any activity or interaction.

8. If USMS decides or were ordered to disclose Yahoo!'s cost reimbursement policy, it would impair the government's ability to obtain similar information in the future. Yahoo! voluntarily submits this information to USMS and other law enforcement agencies with the reasonable expectation that it will be kept confidential and not released to the public. If Yahoo!'s cost reimbursement policy were disclosed to the public, then Yahoo! might have a disincentive to submit the same or similar cost and compliance-related information to USMS or other law enforcement agencies in the future. Such result would directly impair the government's ability to obtain complete and accurate information, as Yahoo! might decide not to provide its entire Compliance Guide to government entities.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 14th day of September 2009.

b6 ([Redacted]



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On Sept-14 2009 before me Ann Marie A. Gutierrez
Notary Public, personally appeared [Redacted] b6

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

My Commission expires: 9-15-2011

[Signature]
Notary Public